Summary of the Clean Power Act of 2003

Amends the Clean Air Act with a new title VII - Electric Generation Emission Reductions

CAPS - Sets annual emissions caps for three pollutants that apply beginning in 2009:

SOx - 275,000 tons in western region
- 1,975,000 tons in eastern region
NOx - 1,510,000 tons
CO2 - 2,050,000,000 tons

Mercury emissions are capped in 2008 at a rate that results in 5 tons annually.

The Administrator is authorized to reduce these caps if the Administrator determines that they are not reasonably anticipated to protect public health or welfare or the environment. In addition, the Administrator is authorized to limit the emissions from an electric generating facility (EGF), if she determines that its emissions may reasonably be anticipated to cause or contribute to a significant adverse impact on an area.

MODERNIZATION - By the later of 2014, or 40 years after commencing operation, each EGF must achieve emission limitations reflecting the best available control technology applied to a new major source of the same generating capacity.

ALLOWANCE CREATION & TRADING - Allowances are created representing each of the caps' tons and may be traded, except for mercury. They will have unique serial numbers to identify them. Western and Eastern SOx allowances may be traded between regions, but extra-regional allowances can't be used to meet an EGF's obligations. Trading in emission allowances with other sectors is prohibited, except if the allowances are for carbon dioxide and are created by a cap on another non-electricity sector.

ALLOWANCE SUBMISSION TO MEET CAPS - Three months after the end of 2009, and every year thereafter, each electric generating facility that generates 15 MW (or the thermal equivalent) or greater from a fossil fuel combustion unit or combination of units that sells electricity must give to EPA at least the amount of allowances that represent the tons they emitted in the previous year. Allowances created and banked under Title IV (acid rain - SOx) or through Title I regulations (ozone - NOx), may be used at the rate of 4:1. However, if allowances are banked because a facility meets NSPS in the period 2001-2008, they may be used 1:1 for compliance with Clean Power Act. Allowances under the Clean Power Act may be banked.

EXCESS EMISSION PENALTIES - By 2007 and every 3 years thereafter, each state will identify the electric generating facilities in that state and in other states that are

significantly contributing to non-attainment of an ozone NAAQS in that state. Beginning in 2009, the Administrator is authorized, upon a petition from a state or a citizen demonstrating that control measures are inadequate to prevent that significant contribution, to require that each identified and inadequately controlled facility submit 3 nitrogen oxide emission allowances for each ton of nitrogen oxides emitted by that electricity generating facility during the period of an ozone NAAQS exceedance that occurred in the previous year.

An EGF that fails to submit enough allowances to EPA will be required to submit additional emission allowances as a penalty. This is similar to section 412 of CAA. For SOx, NOx, and CO2, the penalty is 3 times the excess emissions or shortfall in allowances multiplied by the average annual market price of the allowance. For mercury, the penalty is 3 times the excess emissions and the average cost of mercury controls.

MERCURY EMISSIONS LIMITATION- Starting in 2008, mercury emissions are limited to no greater than 2.48 grams of mercury per 1000 megawatt hours. This is equivalent to reducing aggregate emissions of mercury from EGFs by 90% from today's levels, and the emission limitations imposed are deemed to be maximum achievable control technology (MACT) for mercury. In the event that aggregate emissions from EGFs go above the 5 ton cap, then EPA must adjust the limitations downward. EGFs may average their emissions over 30-day periods and between units at a single facility. EPA must promulgate regulations to prevent the re-release of mercury into the environment from coal combustion waste, i.e., fly ash.

NON-MERCURY HAPS RULEMAKING - EPA must propose MACT regulations to cover non-mercury hazardous air pollutants from EGFs by 2005 and enforce them by 2008.

MONITORING - Coal-fired EGFs above 50MW will be required to conduct ambient air quality monitoring within a 30-mile radius for hazardous air pollutants and sulfur dioxide emitted by the facility. In general, EGFs must conduct continuous emission monitoring.

ALLOWANCE ALLOCATION
Allowances representing the tons of pollution in the emission caps for SOx, NOx, and CO2, are distributed annually every year by the Administrator starting in 2009 to five main categories: consumers/households, transition assistance, renewable energy-efficiency-cleaner energy, carbon sequestration, and existing units.

> Consumers/Households - After the allowances described below are distributed, the Administration will have a minimum of 62.5% of the total allowances to distribute to households. EPA will arrange for a trustee to receive these allowances and to convey their fair market value to households based on the number of persons in the household and the ratio of the household's state's residential electricity consumption to the national residential electricity consumption.

Transition Assistance - EPA will arrange for a trustee to receive 6% of the allowances in 2009 (this declines over 10 years by increments of .5 to 1.5% in 2018), who must then turn around and obtain fair market value for those allowances and convey:

> 80% of that value to dislocated workers and communities that experience a disproportionate impact due to the emission reductions required by the bill, and
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> 20% to producers of electricity intensive products (like aluminum) based on their share of total output multiplied by the average amount of power used by the most efficient production process multiplied by the national average emission rate of the covered pollutants from fossil fuel generating facilities in tons per MW.

Renewable Energy Generating Units, Efficiency Projects and Clean Energy Sources - EPA will allocate no more than 20% of the total allowances to:

> 1) renewable electricity generating units based on their output multiplied by the national average emission rate of the covered pollutants from fossil fuel generating facilities in tons per MWh. So, for each avoided ton of pollution per unit of output, the renewable generator will get an allowance equal to one ton.
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> 2) owners and operators of energy efficient buildings, producers of energy efficient products and entities that carry out energy efficiency projects, based on the tons of pollution that would have been emitted at the national average rate for fossil fuel electricity generation or natural gas combustion for each megawatt-hour or unit of natural gas saved.
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> 3) cleaner fossil fuel EGFs, based on their output multiplied by half of the tons of pollution that would otherwise have been emitted at the national average rate for fossil fuel electricity generation or natural gas combustion for the same amount of output.
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> 4) combined heat and power facilities, based on their BTUs of thermal energy output multiplied by the tons of pollution that would otherwise have been emitted in tons per BTU at a fossil fuel EGF for the same amount of output.

Carbon Sequestration - EPA will allocate up to .075% of the total carbon dioxide allowances to states for developing biological carbon sequestration inventories and for establishing state revolving loan funds for loans to owners of nonindustrial private forest lands to carry out carbon sequestration. EPW will allocate up to 1.5% of the total carbon dioxide allowances to entities conducting geologic carbon sequestration, based on the national average rate of carbon

dioxide emissions from EGFs per ton sequestered.

Existing Facilities. EPA will allocate 10% of the allowances in 2009 (declining 1 point annually over time until it reaches 1% in 2018) to EGFs based on share of 2000 output.

ACID PRECIPITATION AND SENSITIVE ECOSYSTEM RESEARCH - EPA must expand the report completed every four years on the reduction in acid deposition rates necessary to prevent adverse ecological effects by including consideration of changes in lakes and streams acid neutralizing capacity. In addition, EPA must submit a report every four years on sensitive ecosystems, including the Adirondacks, the mid-Appalachian Mountains, the Great Lakes, Lake Champlain, the Rocky Mountains, and the Southern Blue Ridge Mountains. If necessary, EPA is authorized to promulgate regulations in 2012 to protect them.

FAILURE OF EPA TO ISSUE REGS - EPA must promulgate regulations by 2009 to implement and enforce these emission limitations or each EGF must achieve specific emission performance at each facility relative to an uncontrolled source - 95% for sulfur dioxide, 85% for nitrogen oxides, 25% for carbon dioxide, and 90% for mercury.

SMALL GENERATOR INVENTORY - EPA will conduct an inventory of emissions from Electric Generating Facilities (EGFs) with generating capacity less than 15MW. Based on that inventory, EPA will annually subtract those emissions from the total amount of allowances allocated prior to distribution each year.

SAVINGS CLAUSE - Nothing in the Clean Power Act precludes a State from adopting and enforcing any requirement for the control of emissions of air pollutants that is more stringent than the requirements imposed under this title.